

**United States Department of Labor
Employees' Compensation Appeals Board**

A.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 11-896
Issued: October 17, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 15, 2011 appellant filed a timely appeal from a September 30, 2010 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for an oral hearing as untimely. Since more than 180 days elapsed since the most recent merit decision of July 26, 2010 to the filing of this appeal, the Board lacks jurisdiction to review the merits of the claim pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3.²

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely.

¹ 5 U.S.C. § 8101 *et seq.*

² For OWCP decisions issued prior to November 19, 2008, a claimant had one year to file an appeal. An appeal of its decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

On April 28, 2010 appellant, then a 57-year-old distribution and window clerk, filed an occupational disease claim alleging that she sustained a knee sprain as a result of prolonged periods of standing. She first became aware of and realized her condition resulted from her employment on April 21, 2010. Appellant stopped work on April 19, 2010 and returned on April 27, 2010. She submitted various leave analysis reports, medical reports and personal statements.

In a decision dated July 26, 2010, OWCP denied appellant's occupational disease claim finding that she failed to submit sufficient medical evidence establishing that her knee condition was causally related to her employment activities.

In an appeal request form dated August 30, 2010 and postmarked August 31, 2010, appellant requested an oral hearing before OWCP's hearing representative.

By decision dated September 30, 2010, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was untimely. It exercised its discretion and denied her request finding that the issue in her case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered which established that her knee condition resulted from her employment activities.

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant for compensation who is not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision and before review under section 8128(a), to a hearing on her claim before a representative of the Secretary.³

OWCP regulations further provide that a claimant can choose between two types of hearings: an oral hearing or a review of the written record.⁴ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.⁵ The Board has held that section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting hearings or reviews of the written record.⁶ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days and before the claimant has requested reconsideration.⁷ However, if the request is not timely filed or when reconsideration has previously been requested, OWCP must exercise its discretion to grant or deny a request that is

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ *Claudio Vazquez*, 52 ECAB 496, 499 (2001).

⁷ *Martha A. McConnell*, 50 ECAB 129, 130 (1998).

made after this 30-day period.⁸ In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.⁹

ANALYSIS

OWCP denied appellant's occupational disease claim on July 26, 2010. Appellant's request for an oral hearing before OWCP's hearing representative was postmarked on August 31, 2010. The date of her hearing request is determined by the date of the postmark.¹⁰ As appellant's August 31, 2010 hearing request was made more than 30 days after the date of OWCP's July 26, 2010 decision, she was not entitled to a hearing as a matter of right.

OWCP, however, has the discretionary authority to grant a hearing if the request was not timely filed. In its September 30, 2010 decision, it considered the issue involved and properly exercised its discretion when it denied appellant's hearing request and determined that she could equally well address the issue of causal relationship by requesting reconsideration and submitting new evidence. The Board has held that the only limitation on OWCP's authority is reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.¹¹ In the present case, OWCP did not abuse its discretion in denying a discretionary hearing and properly denied appellant's request for an oral hearing under section 8124 of FECA.¹²

On appeal, appellant alleged that she was requesting reconsideration of her claim and submitted a new orthopedic medical report that was not previously considered. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision. Thus, the Board may not consider this evidence for the first time on appeal.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely.

⁸ *Herbert C. Holley*, 33 ECAB 140 (1981); *G.W.*, Docket No. 10-782 (issued April 23, 2010).

⁹ *Id.* See also *Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁰ 20 C.F.R. § 10.616(a); *N.M.*, 59 ECAB 511 (2008).

¹¹ *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹² See *D.F.*, Docket No. 11-42 (issued August 1, 2011); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

¹³ See 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 17, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board